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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,) NO: 1:20-CR-2024-SAB
14)
15 Plaintiff,)
16 vs.) PLAINTIFF’S SENTENCING
17) MEMORANDUM
18)
19 CLIFTON FRANK PETER,)
20)
21)
22 Defendant.)
23)
24)
25)
26)
27)
28)

19 Plaintiff, United States of America, by and through Vanessa R. Waldref,
20 United States Attorney for the Eastern District of Washington, and Thomas J.
21 Hanlon and Richard C. Burson, Assistant United States Attorneys, submits the
22 following sentencing memorandum: I.

23 SENTENCING CALCULATIONS

24 The United States agrees with the calculations contained in the Presentence
25 Investigation Report (“PSIR”). The Defendant pled guilty to three counts of
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second-degree murder.¹ (ECF No. 41). These offenses carry a maximum statutory penalty of life imprisonment. 18 U.S.C. § 1111.

II.

GOVERNMENT’S OBJECTION TO PSIR

The Government has filed no objections to the PSIR.

III.

UPWARD VARIANCE/SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

Since “*Booker*, the scheme of downward and upward departures has been replaced by the requirement that judges impose a reasonable sentence.” *United States v. Tankersley*, 537 F.3d 1100, 1113 (9th Cir. 2008). The Guidelines are the starting point and the initial benchmark for the sentencing process. *Kimbrough v. United States*, 128 S. Ct. 558 (2007). “[A] sentence outside the Guidelines carries no presumption of unreasonableness.” *Irizarry v. United States*, 128 S. Ct. 2198, 2202 (2008). “Any expectation . . . that a criminal defendant will receive a sentence within the presumptively applicable Guideline range did not survive . . . *United States v. Booker*, which invalidated mandatory features of the Guidelines.” *Id.* The Court has broad power to make a reasoned decision on the individualized facts before it. *Rita v. United States*, 127 S. Ct. 2456, 2468 (2007). The Court “take[s] into account the totality of the circumstances” to determine whether a

¹ An upward departure may be warranted in second-degree murder cases involving heinous, cruel, or brutal conduct. U.S.S.G. § 2A1.2, comment n.1.

1 sentence is reasonable. *Gall v. United States*, 128 S. Ct. 586, 597 (2007). A
2 district court contemplating a non-Guideline sentence must consider the extent of
3 the deviation and ensure that the justification is sufficiently compelling to support
4 the degree of the variance. *Peugh v. United States*, 133 S. Ct. 2083
5 (2013)(citations omitted). A district court may vary upward based on factors
6 already incorporated into the Guideline calculations. *United States v. Christensen*,
7 732 F.3d 1094, 1101 (9th Cir. 2013). District courts are in the best position to
8 determine whether particular second-degree murder cases are unusually brutal or
9 cruel. *United States v. Roston*, 168 F.3d 377, 379 (9th Cir. 1999).
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11

12 In determining the appropriate sentence, this Court is required to consider
13 the factors as set forth in 18 U.S.C. § 3553(a).
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15 1. The nature and circumstances of the offense and the history and
16 characteristics of Defendant.
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18 Victims O.V.M. and I.S.G. had been a couple for more than 13 years.
19 Together they had four young children. Both O.V.M. and I.S.G. worked in various
20 orchards to provide for their children. On June 1, 2019, O.V.M. and I.S.G.
21 completed work, went home, and had dinner with their children. After dinner,
22 O.V.M. called his mother and they spoke for approximately thirty minutes. After
23 the phone call, O.V.M. and I.S.G. went out so that I.S.G. could practice driving.
24 O.V.M. was teaching I.S.G. how to drive a car. I.S.G. and O.V.M. never returned
25 home. Due to the fact that O.V.M. and I.S.G. were responsible, loving parents and
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1 failed to return home, a family member called the police to report that O.V.M. and
2 I.S.G. were missing.

3
4 Victim J.L.G. was also a hard-working individual. On June 1, 2019, J.L.G.
5 was driving home to his family. J.L.G. never made it home.

6
7 On June 1, 2019, while the victims were at work, the Defendant was at home
8 drinking alcohol and playing video games. According to the Defendant's mother,
9 the Defendant became upset playing the video games and began yelling.

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11 According to the Defendant's uncle, the Defendant was wearing a headset and
12 playing video games. The Defendant was "getting extremely upset and was
13 yelling." Due to the Defendant's behavior, his uncle departed from the residence.

14
15 The Defendant's mother knew the Defendant was playing video games and
16 was drinking. The Defendant's mother decided to leave the house. The
17 Defendant's mother inferred to law enforcement that this was not uncommon
18 behavior. The Defendant's mother advised that in the past, she would simply leave
19 the house for 4-5 hours and the Defendant would typically be asleep when she
20 returned. However, on June 1, 2019, the Defendant's mother was attacked as she
21 attempted to flee her home. The Defendant picked up a hatchet and broke a
22 taillight and window of her vehicle. The Defendant's mother left her keys in the
23 ignition and exited her vehicle. The Defendant picked up his mother and "body
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1 slammed” her on the ground. The Defendant walked back into his home. The
2 Defendant’s mother ran into a nearby orchard to hide from her son.

3
4 The Defendant, highly intoxicated, decided to go for a drive in his mother’s
5 vehicle. At the same time, victim J.L.G. was driving by the Defendant’s residence
6 on his way home. Based on observations at the crime scene, it appeared that the
7 Defendant had backed out of the driveway at a high rate of speed. At the same
8 time, victim J.L.G swerved off the road to likely avoid an accident. The Defendant
9 exited his truck and murdered J.L.G. with a shotgun.
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12 The Defendant entered his mother’s truck and proceeded northbound on
13 Yakima Street. At the same time, victims O.V.M. and I.S.G. were also traveling
14 northbound on Yakima Street. The Defendant slammed into the back of the
15 victim vehicle and pushed the car off the road. The victim vehicle was destroyed.²
16 The Defendant exited his vehicle with a shotgun. The Defendant murdered I.S.G.
17 as she sat in the driver seat.
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19

20 Two children were playing in nearby area and were throwing rocks in the
21 canal. The children heard the collision and ran over to see what had happened.
22 According to the children, they saw a male exit a vehicle with a gun. The children
23 stated they saw another man get out of the other vehicle. The children advised
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27 ² Pursuant to 5K2.5, property damage is a permissible basis for an upward departure. “There is
28 nothing in the second degree murder Guideline to suggest that damage to property is subsumed
within a conviction for that crime.” *United States v. Larson*, 78 Fed Appx. 650, 658-659 (10th
Cir. 2003)(unpublished).

1 they saw the second man put his hands up in the air and say “no, no.”³ The
2 children advised that they saw the first male shoot the second male who had his
3 hands in the air. The children advised that they ran home. The children advised
4 that the male with the gun was following them.
5

6 Police spoke to T.S., an adult male. T.S. advised that he heard gunshots and
7 saw the two children approaching him. T.S. advised he saw a male behind them
8 who was carrying what appeared to be a shotgun. T.S. advised that he grabbed his
9 pistol and went outside to protect the children. T.S. stated the man with the
10 shotgun ran past his house and jumped a fence. T.S. observed that the male had
11 disposed of the shotgun.
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15 Another adult witness, M.W., advised that she saw a man walk by her house
16 with a long gun. She observed that the male was wearing shorts and did not have
17 shoes. She advised that she saw the male stop at a car and then walk down to a
18 trailer on Columbia Street.
19

20 The shotgun was found at the southeast corner of 4th Street and Columbia
21 Street.
22

23 The Defendant’s aunt, R.T., resided on Columbia Street. R.T. advised law
24 enforcement that the Defendant had come over to her trailer. R.T. advised the
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28 ³ As to O.V.M., Forensic Pathologist Jeffrey Reynolds documented in his report “left wrist and palmar hand disrupted by gunshot damage with wrist fractured and dislocated. . .”

1 Defendant stated that “he had done something bad.” R.T. advised that she did not
 2 allow the Defendant to enter her trailer. R.T. advised the Defendant walked away.

3
 4 The Defendant was subsequently found nearby and apprehended. The
 5 Defendant was wearing shorts and did not have shoes. The Defendant appeared to
 6 be intoxicated.

7
 8 2. The need for the sentence imposed to reflect the seriousness of the
 9 offense, promote respect for the law, and to provide just punishment.

10 The current offense is serious. The Defendant’s criminal history and
 11 conduct here demonstrates that he has no respect for the law. The Defendant while
 12 highly intoxicated⁴ decided to steal his mother’s vehicle and go for a drive.
 13 Without mercy, the Defendant shot and killed three innocent people because they
 14 were in the wrong place at the wrong time. The government submits that a
 15 sentence of 50 years imprisonment will provide just punishment.

16
 17
 18 3. The need for the sentence imposed to afford adequate deterrence to
 19 criminal conduct.

20 In 2011, the Defendant was convicted of first-degree robbery with a deadly
 21 weapon and theft of a motor vehicle. He was sentenced to 36 months
 22 imprisonment. In 2013, the Defendant was convicted of second-degree unlawful
 23 possession of a firearm. The Defendant was sentenced to 9 months imprisonment.

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 27 ⁴ If the evidence supports the conclusion that a Defendant’s drunken driving significantly
 28 endangered the public safety, § 5K2.14 is a permissible ground for an upward departure. *United States v. Larson*, 78 Fed. Appx. 650, 659 (10th Cir. 2003)(unpublished).

1 In 2016, the Defendant was convicted of second-degree criminal trespass. The
2 Defendant was a passenger in a vehicle. At the time of his arrest, multiple firearms
3 were found in the vehicle.
4

5 These prior convictions did not deter the Defendant from engaging in future
6 crimes. Rather, the Defendant's acceptance and use of violence has dramatically
7 escalated. These prior sentences did not deter the Defendant from either
8 possessing firearms or engaging in violent acts.
9

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11 4. The need for the sentence imposed to protect the public from further
12 crimes of Defendant.

13 The Defendant is a danger to community. The Defendant has repeatedly
14 victimized members of the community. Here, the Defendant murdered three
15 unarmed people for no reason. The government submits that a sentence of 50
16 years imprisonment will adequately protect the public.
17

18 5. The need for the sentence imposed to provide Defendant with needed
19 educational or vocational training, medical care, or other correctional
20 treatment in the most effective manner.

21 It appears the Defendant is in need of educational training.
22

23 IV.

24 GOVERNMENT'S SENTENCING RECOMMENDATION

25 The government recommends the Court impose a sentence of 50 years
26 imprisonment. In 2011, police responded to the Defendant's residence concerning
27 an alleged domestic violence situation. The Defendant allegedly assaulted his
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1 mother and armed himself with a rifle. The Defendant left the house and attempted
2 to steal a tractor. The Defendant threatened to shoot the victim. The Defendant
3 then pointed the rifle at the victim. The Defendant was arrested and found in
4 possession of a rifle. On August 16, 2011, the Defendant was sentenced to 36
5 months imprisonment. Less than two years later, the Defendant was found in
6 possession of another rifle. On December 2, 2013, the Defendant was sentenced to
7 9 months imprisonment. Seven months later, the Defendant was again found in a
8 vehicle. Multiple firearms were found in the vehicle.

12 The Defendant argues that tragedies in his life caused him to abuse alcohol.
13 The government recognizes that the deaths of family members is certainly tragic.
14 However, the Defendant was ingesting alcohol, marijuana, and cocaine prior to
15 such tragedies.

17 The government submits that an upward departure is necessary in the instant
18 case. The Defendant is a troubled, violent man with a history of torturing animals,
19 assaulting others, ingesting controlled substances, and possessing firearms. Here,
20 the offense conduct was particularly gruesome. The Defendant shot and murdered
21 three people. All of the victims were unarmed. Due to the Defendant's deliberate
22 actions, the lives of the victim family members will never be the same. The
23 Defendant knew that he had a problem with alcohol. The Defendant knew that he
24 was prohibited from possessing firearms. Yet, the Defendant consumed an
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1 excessive amount of alcohol, armed himself with a firearm, and murdered three
2 people. The Defendant's conduct involved not only infliction of pain towards the
3 victims, but extreme pain and distress for the family, children, and friends of the
4 victims.⁵ The bottom line is that the Defendant is an extreme danger to his own
5 family as well as the public. These facts alone (offense conduct and danger to the
6 public) justify the government's recommendation for an above-Guidelines
7 sentences. Lastly, the government recommends restitution in the amount of
8 \$86,170.00 be ordered.

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12 Respectfully submitted this 30th day of November 2021.

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15 United States Attorney
16 s\ Thomas J. Hanlon
17 THOMAS J. HANLON
18 Assistant United States Attorney
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27 ⁵ See *United States v. Hanson*, 264 F.3d 988, 999 (10th Cir. 2001)(discussing 5K2.8 extreme
28 conduct "the defendant's conduct may involve the "inflict[ion] [of] suffering . . . pain or
distress," not only on the victim but on the victim's family and friends and members of the
community in which the crime is committed; it may be "cruel" in that sense.

1 I hereby certify that on November 30, 2021, I electronically filed the
2 foregoing with the Clerk of the Court using the CM/ECF which will send
3 notification of such filing to the following: John B. McEntire, IV.
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